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should be indulged in favor of legitimacy, and, in doubtful cases, in support of the judgment of the trial court.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 336.]

Appeal from Circuit Court, Rockingham County.

On rehearing. Former opinion reversed, and judgment below affirmed.

For former opinion, see 105 S. E. 91.

C. R. Winfield, of Broadway, and *John T. Harris*, of Harrisonburg, for appellants.

Ward Swank, of Harrisonburg, for appellee.

A. S. WHITE & CO., Inc. v. RYAN.

Nov. 17, 1921.

[109 S. E. 426.]

1. Limitation of Actions (§ 195 (4)*)—Burden on Plaintiff to Prove Nonresidence.—In action on contract instituted in March, 1921, where defendant pleaded the three-year statute of limitations and showed that contract was made in August, 1916, the burden was then cast upon the plaintiff to prove the fact of nonresidence of the defendant between such dates.

2. Pleading (§ 339*)—Plea Not Waived by Failure to Call to Attention of Jury.—Where defendant pleaded statute of limitations, and it appeared on trial that limitations had run, the fact that the question of limitations was not specifically called to the attention of the jury did not change the pleadings, and it cannot be inferred therefrom that defendant withdrew or waived his plea of limitations.

Error to Circuit Court, Nelson County.

Action by A. S. White & Co., Inc., against Thomas F. Ryan. Judgment for defendant, and plaintiff brings error. Affirmed.

Caskie & Caskie, of Lynchburg, for plaintiff in error.

LYNCH v. COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 427.]

1. Assault and Battery (§ 48*)—Battery Includes Assault.—A battery accompanies and includes an assault.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 730.]

2. Assault and Battery (§ 48*)—Intended Injury May Be to Feelings or Mind; "Battery."—A "battery" is the unlawful touching of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the person of another by the aggressor himself or by some substance set in motion by him, but the intended injury may be to the feelings or mind as well as to the corporeal person, and the elements of rudeness or insult may become a test of the offense.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Battery. For other cases, see 1 Va.-W. Va. Enc. Dig. 730.]

3. Words and Phrases—"Willfully" Defined.—The word "willfully" is variously defined in legal parlance and may mean, among other things, "designedly," "intentionally," or "perversely" (citing 4 Words and Phrases, Second Series, Willfully).

4. Assault and Battery (§ 48*)—Conviction Held Warranted.—Where accused knocked at door of prosecutrix and said, "Say, Mrs. M., I want to kiss a white woman; I want to see what it is like to kiss a white woman," and she replied, "No, sir," and he thereupon put his hand upon her shoulder and said, "I didn't mean to insult you," and left when she told him to get out, held, that a conviction for assault and battery was warranted.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 734.]

Error to Circuit Court, Montgomery County.

Frank Lynch was convicted of assault and battery, and brings error. Affirmed.

Harless & Calhoun, of Christiansburg, for plaintiff in error.

John R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

POPE v. COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 429.]

1. Disorderly House (§ 17*)—Evidence Held to Show Accused Knew of Disorderly Acts.—In prosecution for keeping a disorderly house, evidence held to show that accused knew of disorderly practices on his premises.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

2. Disorderly House (§ 17*)—Evidence Held to Show Habitual Disorder on Premises.—In prosecution for keeping a disorderly house, evidence held to show, not merely a single occasion of disorder, but habitual disorderly practices.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.